the same result. Dietrich's new brush-type car wash therefore fails to qualify as a new item under the definition specified in Section 212.111(a)(i).

Based on the considerations set forth above and the submissions made by Dietrich in support of its appeal, the Federal Energy Administration has concluded that Dietrich has failed to demonstrate that the Interpretation issued to it on September 27, 1974 was erroneous in fact or law or was arbitrary or capricious.

It Is Therefore Ordered That:

(1) The appeal filed by Bud Dietrich's Orinda-Shell Service Station from the Interpretation issued to it by the Regional Counsel of FEA Region IX on September 27, 1974, be and hereby is denied.

(2) This is a final order of the Federal Energy Administration from which any aggrieved party may seek judicial review.

¶ 80,513

Mobil Oil Corporation, New York, New York (Case No. FEA-0209, Filed 8-14-74, Decided 1-22-75).

Freedom of information.—Mobil Oil Corporation (Mobil) filed an appeal from a Denial of Request for Information issued to it by the Federal Energy Administration on July 23, 1974. Mobil had requested the disclosure of all information utilized by the FEA in calculating the Refiners Buy-Sell List as published in the Federal Register of June 21, 1974. In considering Mobil's appeal, the FEA determined that: (i) in calculating the June 21, 1974 Buy-Sell List, the FEA had utilized: (a) information submitted by all refiners containing the quantities of imported and domestic crude oil which each refiner bought or sold in the first allocation quarter, and (b) information submitted by all refiners on Form FEO-900A (rev.); (ii) the requested information is confidential, commercial information which is exempt from public disclosure pursuant to 5 U. S. C. 552(b)(4); and (iii) since the disclosure of such highly sensitive commercial information could result in serious competitive harm to the refiner submitting the information, the release of such information would not be in the public interest. The FEA concluded that Mobil failed to demonstrate that the Denial of Request for Information issued to it on July 23, 1974 was erroneous in fact or law and denied the appeal.

Decision and Order

Mobil Oil Corporation (Mobil) filed an appeal with the Office of Exceptions and Appeals of the Federal Energy Administration from an order issued by the FEA denying a Request for Information filed by the firm on July 11, 1974. In its Request for Information Mobil asked the FEA to produce for its examination "any and all books, records, writings, materials or other documents which were utilized by the Federal Energy Office in the calculation of the refiners crude oil Buy-Sell List as published in the Federal Register of June 21, 1974." On July 23, 1974, the FEA denied Mobil's request.

On June 7, 1974, the FEA promulgated the Refiners Buy-Sell List for the June through August crude oil allocation quarter under the FEA Mandatory Crude Oil Allocation Program. The program was established to assure the equitable distribution of crude oil at equitable prices among all sectors of the petroleum industry and to meet

other specific objectives of the Emergency Petroleum Allocation Act of 1973. (For a discussion of the legislative history and rationale underlying the Mandatory Crude Oil Allocation Program, see *Union Oil Company of California,* CCH Fed. Energy Guidelines, Par. 20,628 (July 19, 1974).) An essential part of the implementation of the program is the computation and publication of a Refiners Buy-Sell List which sets forth the purchase entitlements of refiner-buyers, small refiners and independent refiners, and the corresponding sales obligations of refiner-sellers. The purchase entitlement for each refiner-buyer under that list is calculated on the basis of the difference between its crude oil runs for specified periods. The sales obligation of each refiner-seller is determined on the basis of its total refinery capacity as of January 1, 1973.

Subsequent to the issuance of the June 7, 1974 Buy-Sell List, errors in that list were discovered which resulted primarily from insufficient information having been requested of refiners by the FEA. As a result, an amended Buy-Sell List was published on June 21, 1974 (39 F. R. 22354). Mobil was included in the amended Buy-Sell List as a refiner-seller, and was obligated, pursuant to the provisions of 10 CFR 211.65, to offer for sale to refiner-buyers 6,533,389 barrels of crude oil in the June through August crude oil allocation quarter.

In its denial of Mobil's Request for Information, the FEA determined that, in calculating the corrections to the June 7, 1974 Buy-Sell List, it primarily utilized: (i) information submitted by all refiners of crude oil containing the quantities of imported and domestic crude oil which each refiner bought or sold in the first allocation quarter of 1974, and (ii) information submitted by all refiners on Form FEO-900A (rev.), the Crude Oil Allocation Program Refiner Quarterly Report. The FEA concluded that these two categories of information were exempt from disclosure under the provisions of 5 U. S. C. 552(b)(4).

Mobil states in its appeal that its Request for Information included, in addition to a request for the material used in calculating the June 21, 1974 amended Buy-Sell List, a request for all information furnished to the FEA pursuant to the reporting requirements of 10 CFR 211.66. In view of this allegation, the FEA re-examined Mobil's Request for Information submitted to the FEA on July 11, 1974 and found that no such request had been made on that date. Consequently, all aspects of Mobil's appeal which relate to the information furnished to the FEA pursuant to the reporting requirements of 10 CFR 211.66 are defective since, under the provisions of Section 202.6(a) of the applicable FEA Regulations, only denials by the FEA of requests for information may be appealed.

In denying Mobil's request for data the FEA determined that the requested information was not subject to release under 5 U. S. C. 552(b)(4). The provisions of 5 U. S. C. 552, known as the Freedom of Information Act, were implemented by the FEA in Subpart A of Part 202 of the Mandatory Petroleum Allocation and Price Regulations. Although the primary purpose of the Freedom of Information Act is to encourage disclosure of information held by the government to private citizens upon their request, the Congress recognized that certain categories of information must in the public interest be exempt from the disclosure requirements of the Act. In this regard, Section 552(b) lists nine specific exemptions from the disclosure requirements of the Act.* (An identical list may be found at 10 CFR 202.9(a).) The fourth exemption, on which the FEA relied in denying Mobil's Request for Information, applies to matter which are:

Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

* No consideration has been given in this decision to the amendments to the Freedom of Information Act which will become effective on February 19, 1975 (Pub. L. 93-502, November 21, 1974).

The information requested by Mobil was properly classified by the FEA as exempt from disclosure. It consists of highly sensitive information submitted to the FEA by refiners of crude oil. The first category of information which the FEA utilized in computing the amended Buy-Sell List consists of data submitted by each refiner specifying in detail the quantities of imported and domestic crude oil which they purchased and sold during the first allocation quarter of 1974. This information is clearly "commercial" in nature, since it concerns the manner in which the refiner operates its business. Disclosure of the information would reveal, for a three month period, the percentage of each refiner's supply of crude oil that was obtained from foreign sources and the percentage that was obtained from domestic sources. Information so intimately connected with a particular firm's operations has been consistently held to be exempt from disclosure in court opinions and in previous FEA decisions. See, *e. g., National Parks and Conservation Association v. Morton,* 498 F. 2d 765 (C. A. D. C. 1974); *Grumman Aircraft Engineering Corporation v. Renegotiation Board,* 425 F. 2d 578 (C. A. D. C. 1970); *Kocolene Oil Corporation,* CCH Fed. Energy Guidelines, Par. 20,199 (December 2, 1974); *Reinauer Petroleum Company,* CCH Fed. Energy Guidelines, Par. 20,216 (December 23, 1974). In fact, the report of the House Committee on Government Operations stated with respect to the fourth exemption:

This exemption would assure the confidentiality of information obtained by the Government through questionnaires or through material submitted and disclosures made [to the Government] . . . . It exempts such material if it would not customarily be made public by the person from whom it was obtained by the Government. H. R. 1497, 89th Congress, 2d Session, p. 10.

The disclosure of the first category of information requested by Mobil would expose the origin (i. e., domestic or imported) of the crude oil supply of each refiner, from which a competitor could infer the cost of crude oil for the refiner. That information could be used to the detriment, in a competitive sense, of the refiner submitting the information, and would not generally be made available to the public by the refiner.

The second category of information utilized by the FEA in calculating the amended Buy-Sell List of June 21, 1974 consists of the information submitted by all refiners contained on Form FEO-900A (rev.). This form contains estimates of the supplies of crude oil available to the refiner submitting the form, the quantities of crude oil which the refiner purchased and sold in various periods, the origin (i. e., domestic or imported) of the crude oil supply of the refiner, the processing agreements entered into by the refiner and the actual available crude oil for runs to stills for the refiner. The disclosure of such information would reveal sensitive aspects of the refiner's internal operations with respect to its competitive position, indicating the refiner's cost of crude oil and the availability of crude oil to the refiner. Competitors of the refiner could utilize such information in preparing their marketing strategies. They could adjust their strategies to potential changes in the prices charged by the refiner, as indicated by changes in the cost of crude oil to the refiner, and to possible shortages or surpluses of petroleum products which the refiner may experience due to changes in the availability of crude oil to the refiner. A prospective purchaser of petroleum products from the refiner could obtain valuable information on the cost and supply of crude oil to the refiner from the requested forms which would give that purchaser an unfair advantage over the refiner in contract negotiations. The information contained on the requested forms, having a potential for misuse by the refiner's competitors and purchasers, is not customarily made public by the refiner and is therefore also exempt from the disclosure requirements of the Freedom of Information Act under the fourth exemption.

Mobile contends, however, that all of the requested information should nevertheless, be disclosed to the public by

the FEA to assure uniform reporting by refiners and uniform interpretation of the submitted data by the FEA. Furthermore, Mobil contends that disclosure of this material is necessary so that Mobil may determine whether the FEA regulations have been correctly and fairly applied to all refiners. Although Mobil cites no authority for these contentions, Section 202.1 of the FEA's regulations requires the disclosure of information which the FEA is authorized to withhold under 5 U. S. C. 552 unless such disclosure is found to be contrary to the public interest. The disclosure of the information requested by Mobil in this case would not be in the public interest. As discussed above, the highly sensitive commercial information requested by Mobil, if made available to a competitor of the refiner submitting the information, could be used to the competitive detriment of the refiner. As a result, the undesirable consequences that could result from the disclosure of the information to the public significantly outweighs the interests which Mobil contends would be served by the release of this information.

In any event, the FEA's disclosure of the information requested by Mobil might well violate 18 U. S. C. Section 1905, which subjects to criminal sanctions any Federal officer or employee who discloses any information which concerns or relates to "the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association" to any extent not authorized by law.

Based on the considerations set forth above and the submission made by Mobil in support of its appeal, the Federal Energy Administration has concluded that Mobil has failed to establish that the Denial of Request for Information issued to it on July 23, 1974 is erroneous in fact or law.

It Is Therefore Ordered That:

(1) The appeal filed by Mobil Oil Corporation from the Denial of Request for Information issued to it on July 23, 1974 be and hereby is denied.

(2) The portion of the appeal filed by Mobil Oil Corporation which requests all information furnished to the FEA pursuant to the reporting requirements of 10 CFR 211.66 be and hereby is dismissed.

(3) This is a final order of the Federal Energy Administration of which any aggrieved party may seek judicial review.

¶ 80,514

Tesoro Petroleum Corporation, San Antonio, Texas (Case No. FEA-0203, Filed 8-16-74. Decided 1-22-75).

Crude oil.—Tesoro Petroleum Corporation appealed from an Interpretation of Section 212.74 of the FEA Regulations which had been requested by the Texas Liquid Waste Disposal Company, a firm which as one of its business operations reclaims crude petroleum from the salt water generated by oil and gas wells and from the bottom of pits in which the salt water is often stored. Tesoro is a purchaser of such reclaimed crude petroleum from Texas Liquid. The Interpretation held that Texas Liquid is a producer of domestic crude petroleum within the meaning of Subpart D of the FEA Regulations even though the production results from reclamation and that the reclaimed crude petroleum can properly be sold as "new" crude petroleum without regard to the FEA ceiling price regulations. In granting the Appeal,